

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff

v.

CRIMINAL 05-191 (HL)

JORGE LUIS MATOS-BURGOS,

Defendant

MEMORANDUM ORDER DIRECTED TO OMNIBUS MOTION FOR DISCOVERY
AND DISCLOSURE

At the pretrial conference, parties were informed that I would rule on the Omnibus Motion filed on July 6, 2005, Docket No. 16. I will address the requests specifically or globally as I deem appropriate. Rulings directed to the omnibus motion will refer to the corresponding numeration in the motion if applicable.

SECTION A: DISCOVERY: RULE 16, FEDERAL RULES OF CRIMINAL PROCEDURE

The Rule 16 motions are granted but only in strict compliance with the Rule. The motion is otherwise denied. This assumes the United States has given the defendant all Rule 16 material. If any additional Rule 16 material is discovered, the United States is to notify the court how, specifically and not generically, the Rule 16 request has been further complied with.

I. CO-CONSPIRATOR STATEMENT: RULE 801(d)(2)(E), FEDERAL RULES EVIDENCE.

The request for co-conspirator statements is denied. This request does not fall within the purview of Rule 16(a)(1)(A). See United States v. Burns, 15 F.3d 211,

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3 214 n.1 (1st Cir. 1994); In re United States, 834 F.2d 283, 286-87 (2d Cir. 1987);
4 United States v. Orr, 825 F.2d 1537, 1541 (11th Cir. 1987); United States v.
5 Roberts, 811 F.2d 257, 258-59 (4th Cir. 1987); United States v. Bennett, 158 F.R.D.
6 482, 484 (D. Kan. 1994); United States v. Stroop, 121 F.R.D. 269, 276 (E.D.N.C.
7 1988).

9 II. DOCUMENTS AND TANGIBLE OBJECTS

10 Granted as covered by Rule 16 and Brady; otherwise denied.

11 III. REPORTS OF EXAMINATIONS AND TESTS

12 Granted as covered by Rule 16 and Brady; otherwise denied.

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14 IV. SEARCHES, MAIL COVER, PEN REGISTERS, TELEPHONE TOLL RECORDS,
VIDEO, TELESCOPIC OR PHYSICAL SURVEILLANCE

15 Granted as covered by Rule 16; otherwise denied.

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17 V. WIRETAPPING, EAVESDROPPING AND CONSENSUAL RECORDINGS

18 Denied except that consensual recordings of defendant falling within Rule 16
19 discovery will be provided.

20 VI. REQUEST FOR DISCLOSURE OF EXCULPATORY EVIDENCE

21 The request for disclosure is granted as discovered. See United States v.
22 Bagley, 473 U.S. 667, 675 (1985); United States v. Agurs, 427 U.S. 97, 104 (1976);
23 Giglio v. United States, 405 U.S. 150, 154 (1972); Brady v. Maryland, 373 U.S. 83,
24 87 (1963); United States v. Sepúlveda, 15 F.3d 1161, 1177-78 (1st Cir. 1993);
25 United States v. Osorio, 929 F.2d 753, 757-58 (1st Cir. 1991); United States v.
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3 Pandozzi, 878 F.2d 1526, 1529 (1st Cir. 1989); United States v. Ingraldi, 793 F.2d
4 408, 411 (1st Cir. 1986).

5 The United States has an on-going obligation to comply with this discovery
6 order as information is made known to it, except where 3500 material is involved
7 and not overridden by Brady considerations. The United States should have provided
8 this information as applicable by June 25, 2005, according the court's scheduling
9 order.
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11 VII. REQUEST FOR SPECIFIC KYLES AND BRADY INFORMATION

12 Denied or moot as applicable, except if covered by Brady.

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14 VIII MISCELLANEOUS REQUESTS FOR GOVERNMENT'S WITNESS LIST

15 The defense has requested a list of the government's witnesses and their
16 addresses. See United States v. Murphy, 480 F.2d 256, 259 (1st Cir. 1973). The
17 request is denied. See United States v. Sclamo, 578 F.2d 888, 890 (1st Cir. 1978);
18 United States v. Panzardi-Alvarez, 646 F. Supp. 1158, 1160 (D.P.R. 1986); cf.
19 United States v. Barrett, 766 F.2d 609, 617 (1st Cir.), cert. denied, 474 U.S. 923
20 (1985).
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22 SECTIONS B & C: REQUEST FOR EARLY DISCLOSURE OF JENCKS MATERIAL &
23 PRESERVATION OF LAW ENFORCEMENT NOTES AND MEMOS

24 The United States will transcribe grand jury witness testimonies in
25 preparation for production under 18 U.S.C. § 3500 if applicable. The request to
26 preserve all law enforcement notes is granted and all rough notes and memoranda
27 are to be preserved in the event they are needed as 3500 material, or needed for in
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3 camera inspection. See United States v. Houlihan, 92 F.3d 1271, 1288-89 (1st Cir.
4 1996). The request for early disclosure of Jencks is moot since the court has
5 directed that all Jencks be given one day before trial.

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7 SECTION D: REQUEST FOR NOTICE TO INTRODUCE EVIDENCE PURSUANT TO
8 FEDERAL RULE OF EVIDENCE 404(b)

9 The United States is to produce all Federal Rule of Evidence 404(b) material
10 as it becomes aware of the same.

11 SECTION E: MOTION IN LIMINE CONCERNING IMPEACHMENT EVIDENCE

12 Denied.

13 SECTION F: RULE 12(b)(4)(B), PREVIOUSLY RULE 12(d)(2), FEDERAL RULES OF
14 CRIMINAL PROCEDURE

15 The defense requests notice of any evidence that the government intends to
16 produce at trial that may arguably be subject to a motion to suppress, citing as
17 authority Rule 12(d)(2), now 12(b)(4)(B), Federal Rules of Criminal Procedure.
18 At the conference, the United States informed that it had provided all discovery to
19 which the defendant is entitled under Rule 16, Federal Rule of Civil Procedure,
20 including all exculpatory evidence, of which there is allegedly none.

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22 Assuming that the government has complied with the spirit and letter of Rule
23 16, I will not direct the United States to designate that evidence which the
24 defendants may object to under Rule 12(b)(3)(C). See United States v. De la Cruz-
25 Paulino, 61 F.3d 986, 993 (1st Cir. 1995). This assumes that the government's
26 notice of June 23 complies with the designation requirement of Rule 12(b)(4)(B),
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3 Fed. R. Crim. P. Again, all Rule 16 material has arguably been tendered to the
4 defendant. The defendant is thus placed on notice that the United States may use
5 such evidence in its case-in-chief. Cf. United States v. Lanoue, 71 F.3d 966, 971-79
6 (1st Cir. 1995).
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8 SO ORDERED

9 At San Juan, Puerto Rico, this 12th day of July, 2005.
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12 S/JUSTO ARENAS
13 Chief United States Magistrate Judge
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